

112

File No. 674
1935.

Collection No.

Mysore Residency

2/7/47 ^{mas} 3/7

Bangalore.

(K)

Pros. Serial Nos. 1 - 4.

Subject.

Application of the Indian
Finance Act 1935 to the
C. & M. Station of Bangalore.

Previous References.

Later References.

Inclined

NOTES AND PRECIS.

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Dy. No. 3183

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The necessity for the application of the Indian Finance Act to the C. & M. Station, Bangalore, has been discussed in paras 22 and 23 of the notes in F.346/32 regarding the Income - tax Appeal of Mr. V. Chinnaswami Mudaliar. The legal advisers retained in the appeal have also advised that the Act in so far as it relates to Income tax ~~Act~~ should be applied every year to the C. & M Station in the same way as other enactments, thus practically endorsing the position taken in the notes referred to above.

The Finance Bill in clause 4 also fixes the schedule of postal rates leviable during the year 1935-36. Section 7 of the Indian Post Office Act, 1898, which has been applied to the Station, provides that the Governor General in Council may by notification in the Gazette of India fix the rates of postage and other sums to be charged in respect of postal articles. It is necessary therefore to retain in the Finance Act as applied to the Station also provisions relating to the revised postal rates.

The remaining clauses of the Finance Bill, nos. 2, 3 and 6, relate to duties leviable under certain Acts which have not been applied to the Station. There is no need therefore for the retention of these provisions in the Act as applied to the Station. They may be omitted.

A draft to the Govt. of India is submitted.

(It seems unnecessary at this stage to apply the ~~provi~~ two Ordinances regarding Income-tax and Postal Rates since their duration is limited to the period from the 1st April to the time when the Finance Act comes into operation. It won't be long before the latter Act comes into force.)

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Proposals have been submitted to the Government of India in the letter at S.N.2 for the application of the Indian Finance Act, 1935 to the C & M Station of Bangalore so as to enable the levy in the station of postage and income-tax at the rates leviable in British India.

Copy of the telegram has been communicated separately to the Income-tax Officer. Strictly speaking assessment proceedings can commence only after application of the Act in question. As the Act (may however) be expected to be applied shortly and as matters have gone on in the past without the formal application of the Act, nothing need be done at present except to await the orders of the Government of India with reference to the letter at S.N.2.

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Dy. No. 5423

S.N.4

Para 1 of P.U.C. re: Income-tax rates.

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The Govt. of India seem to take their stand upon the inconsistency between the High Court's judgment^x and the Counsel's opinion^o and have not therefore gone into the merits of the case. Neither the High Court in its judgment nor the counsel in his advice has stated the reasons which led up to their conclusions.

9
From what appears from the judgment^x the High Court's manner of disposal appears to have been summary. They simply held that the respondent's case was "hardly arguable" and agreed with the Commissioner of Income-tax. There is no referew^u to any argument, except perhaps in the statement^u they agreed with the Commissioner of Income-tax, and there is no discussion of any point.

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The Commissioner's view^o was that as section 3 of the Income-tax Act as applied to the Station, provided for the levy of income-tax at the rates to be fixed by the Indian Legislature there was no need for the application of the Finance Act. This view however overlooks one important point. Sec.3 of the Act was applied without modification. The first proviso to the general notification^o No.261-I, dated the 24th April 1929, applying various enactments to the Station lays down in effect that references in the British Indian Act to authorities, places etc., should be read as referring to the corresponding authorities, places etc., in the area to which the Act is applied. In correctly reading sec.3 of the Act as applied it is necessary therefore to substitute for the words "Indian Legislature" in the British Indian enactment, the name of the corresponding legislative authority in the Station (i.e the Governor General in Council exercising powers under the Foreign Jurisdiction order in Council). The Commissioner's reading of the section overlooks this point and is not therefore correct. His reading would have been correct if the provisions thereof had been made in the special^{notification} of the Governor General

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(5) in Council applying the Income-tax Act. The effect of such provision would be to override to that extent the provisions of the general notification already referred to, requiring the substitution for references to authorities etc.; in the British Indian Act, of corresponding authorities in the area to which the Act is applied. Such provision will then be shown as a modification in col.2 of the schedule of Acts annexed to the general notification against item No. 93 relating to Income-tax Act. In the absence of such modification the only correct way of enabling the levy of tax at specified rates is to apply the Finance Act^x relating to income-tax rates.

11 The judgment in question does not show, as already stated, whether this aspect of the case was at all raised before the High Court or was considered by them.

12 It is also relevant to point out that the portion of the Finance Act relating to income-tax rates viz., sec. 5, was^{*} applied by the Govt. of India to Berar in Notification No. 302-I.B, published at pages 664 of Part I of the Gazette of India dated the 25th May 1935. This action shows at least that the Govt. of India themselves were of the opinion (at any rate till they saw the judgment of the Madras High Court) that it was necessary to apply to an Administered Area the portions of the Finance Act relating to income-tax rates. Apart from the fact that the decision in question has the authority of a High Court ruling the judgment does not disclose any ground which would justify the Govt. of India in revising their opinion.

13 It is for consideration whether the position as stated above should be explained to the Govt. of India.

14 It may be noted however that as the ruling of the High Court is authoritative, the action of the Income-tax authorities in levying Income-tax at British Indian rates is not likely to be challenged again in a court of law.

Para 2 of the P.U.C. re: Postal rates .

15 The aspect of the matter referred to in this paragraph

was not overlooked. Sec. 7 of the Post Office Act provides that the Governor General in Council may by notification fix the rates of postage. Nevertheless the Govt. of India have thought it proper to have the postal rates fixed by providing for them in the annual Finance Acts. It was on more or less analogous grounds that it was considered desirable when applying the annual Finance Act, to retain therein the provisions regarding the postal rates. There is no objection to the deletion of this section.

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I think we had better let the question drop. It certainly looks as if the G. I. have not gone very carefully into the merits of the question. But have rather taken their stand on the High Court decision; but as we have the authority of a High Court decision, the position is not likely to be questioned again in a Court of law: and no practical difficulty is therefore likely to arise.

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We need not pursue the matter.

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CORRESPONDENCE.

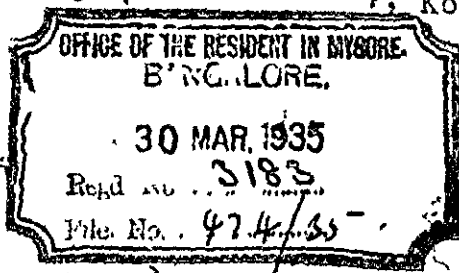
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S.N. 46

F 346-52

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Extract of letter from Messrs. King & Partridge,
7, Kondi Chetty Street, Madras, dated the 10th December 1934.



3. We discussed the whole question fully and in all its aspects with Mr. T.R. Venkatarama Sastri and we beg to advise that it is desirable that the Indian Finance Act which is passed annually by the Indian Legislative Council so far as it relates to Income-tax be extended by the Governor-General in Council every year to the Cantonment area in the same way as the other enactments under The Foreign Jurisdiction Order in Council.

"EXTRACT"

SUPERINTENDENT, RESIDENT'S OFFICE.

PKH
28.3.

No. F.474-35
R.O.I.

Issued

11.4.

From

The Hon'ble Lieut.-Colonel C.T.C. Plowden, C.I.E.,
RESIDENT IN MYSORE.

To

The Political Secretary to the Government of India,
Foreign and Political Department.

Dated Bangalore, the // ¹⁵ April 1935.

Application of the Indian Finance Act, 1935, to
the Civil and Military Station of Bangalore.

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Sir,

With reference to the correspondence ending with my letter No.346/32/R.O.I, dated the 4th March 1935, I have the honour to say that the solicitors and counsel retained for Government in the case Commissioner of Income-tax, Civil and Military Station, Bangalore, versus V. Chinnaswami Mudaliar have advised that it is desirable that the Indian Finance Act which is passed annually by the Indian Legislature should be extended (so far as it relates to Income-tax) every year to the Civil and Military Station of Bangalore in the same way as other enactments.

2. I am satisfied that it is advisable to apply from year to year the Indian Finance Act to the Civil and Military Station of Bangalore, not only so far as it relates to Income-tax, but also so far as it relates to postal rates, inasmuch as the position in regard to the one does not differ materially from that in regard to the other. I accordingly submit a draft notification.

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notification for the approval of the Governor General in Council.

I have the honour to be,
Sir,
Your most obedient servant,

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R E S I D E N T. Lt.-Colonel,

Ms.

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GOVERNMENT OF INDIA.
Foreign and Political Department.

NOTIFICATION.

2 (R) In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and of all other powers enabling him in that behalf, the Governor General in Council is pleased to direct that the following further amendment shall be made in the schedule to the Notification of the Govt. of India in the Foreign and Political Deptt., No. 261-I, dated the 24th April 1929, applying certain enactments to the C. & M. Station of Bangalore, namely:-

After entry No. 103-H, the following entry shall be inserted, namely:-

I . The Indian Finance Act, 1935
(Act No. 1935)

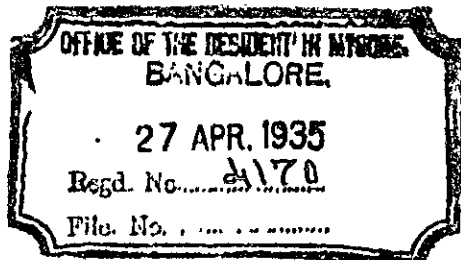
Only
h Sections 1, 4 and 5
only apply.
shall be inserted

POLITICAL SECRETARY TO THE GOVT. OF
INDIA.

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Telegram from the Central Board of Revenue,
dated the 21st April 1935.

INDIAN FINANCE BILL NOW LAW ASSESSMENT
PROCEEDINGS CURRENT YEAR MAY BE BEGUN.



~~"C O P Y"~~

~~SUPERINTENDENT, RESIDENT'S OFFICE.~~

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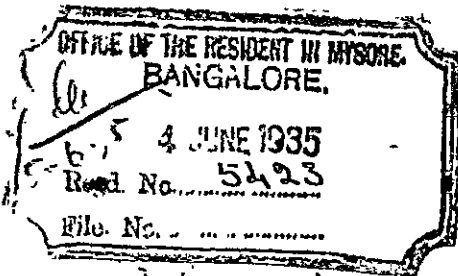
No. F.1(2)-I.B./35.

From

The Deputy Secretary to the Government of India
in the Foreign and Political Department,

To

The Hon'ble the Resident in Mysore.



Simla, the 29th May 1935.

Application of the Indian Finance Act
1935, to the Civil and Military Station
of Bangalore.

Sir,

With reference to your letter No. F.474-35/R.O.I., dated the 11th April 1935 on the above subject, I am directed to state that with due respect to the Solicitors and Counsel who have expressed the opinion that it is desirable that the income-tax section of the annual Finance Act should be applied to the Civil and Military Station, their opinion is a very strange sequel to the decisive rejection by the Madras High Court of the contention that failure to apply the section invalidated the collection of income-tax in the Civil and Military Station.

2. As regards paragraph 2 of your letter, I am to state that your proposal to apply the postal rate section of the Indian Finance Act appears to be inappropriate. The postal section of the Finance Act effects a temporary amendment of the Indian Post Office Act as in force in British India, and the application of the Indian Post Office Act to the Civil and Military Station of Bangalore consequently carries with it the application of the postal rate section of the Finance Act for the time being in force, under the operation of the declaration in the substantive part of the notification of

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the Government of India in the Foreign and Political Department No. 261-I., dated the 24th April 1929, that the enactments specified in the Schedule shall apply to the Civil and Military Station subject to any amendments to which the enactments are for the time being subject in British India.

3. In the circumstances explained above, it is regretted that the Government of India are unable to agree to the issue of the draft notification forwarded with your letter under reply.

I have the honour to be,

Sir,

Your most obedient servant,



Deputy Secretary to the Government of India.

WLS